

Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
SPECTRUM DYNAMICS MEDICAL LIMITED, : Docket #18cv11386
Plaintiff, : 1:18-CV-11386-VSB-KHP
- against - :
GENERAL ELECTRIC COMPANY, et al., : New York, New York
Defendants. : March 31, 2021
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE KATHARINE H. PARKER,
UNITED STATES MAGISTRATE JUDGE

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None

E X H I B I T S

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None

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3 THE CLERK: Calling case 18cv11386, Spectrum
4 Dynamics Medical versus General Electric Company. The
5 Honorable Katharine H. Parker, presiding. Beginning with
6 counsel for the plaintiff, can you please make your
appearance for the record?

7

8 MR. GREGORY MILLER: Good morning, Your Honor.
9 Gregory Miller, Rivkin Radler, local counsel on behalf
10 of the plaintiff. Also with me on the line is Neil
11 Greenblum, Branko Pejic from Greenblum & Bernstein. Good
morning.

12

13 HONORABLE KATHARINE H. PARKER (THE COURT): Good
morning.

14

15 THE CLERK: And counsel for the defendants, could
you please make your appearance for the record.

16

17 MS. MARLA BUTLER: Yes, this is Marla Butler for
18 the defendants and with me are Jesse Jenike-Godshalk, and
Brian Lanciault, all of us from Thompson Hine.

19

20 THE COURT: Okay, good morning, everyone, nice to
talk with you this morning. As a reminder, I ask you to
21 keep your phones on mute unless you're speaking to
22 eliminate background noise and remind you that you can
23 order a transcript though it would have to be ordered
24 within three days of today. And finally, this call line is
25 open to the press and public on a listen only basis, and I

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2 want to remind everyone on the call that the Court
3 prohibits others from recording and rebroadcasting court
4 conferences. Violation of this rule may result in
5 sanctions.

6 So thank you all for submitting your status
7 letters. The status letter, agenda letter and then I want
8 to just talk briefly about the letter, Mr. Greenblum, that
9 you submitted last night. But why don't we start first
10 with the privilege issue because it seems that both
11 sides have issues with the other side's privilege log.
12 And it seems to me that the dispute, the disputes
13 regarding the logs are not actually ripe, that both
14 sides need to go back, take a look at their logs and
15 potentially provide a little bit more information so
16 that your adversaries can evaluate and determine
17 whether there are particular challenges to that log.
18 But I'd like to hear from the parties on this issue,
19 let me hear first from Spectrum.

20 ATTORNEY FOR PLAINTIFF: Okay, thank you, Your
21 Honor. As far as privilege log issue, Spectrum
22 believes that its privilege log complies with the
23 rules and truly the only dispute I think as far as the
24 descriptions and the actual log, itself, is whether or
25 not the Spectrum privilege log is required to include

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2 the drive files.

3 Defendant's privilege log includes that,
4 Spectrum's does not because we did not understand the
5 local rules to require that. And we would seek Your
6 Honor's guidance and to the extent we do update our
7 privilege log, we would like your guidance to let us
8 have an understanding whether we should include that.

9 As far as the --

10 THE COURT: You're talking about the file
11 names.

12 ATTORNEY FOR PLAINTIFF: Yes, the drive file
13 names. Yes, Your Honor.

14 THE COURT: Right, okay, and that would
15 identify the repository, for example, email or
16 someplace else, what is that going to identify?

17 ATTORNEY FOR PLAINTIFF: Your Honor, to be
18 honest with you, I'm not technically savvy enough to
19 understand or respond to that. It is defendants that
20 have raised that as a deficiency in the Spectrum
21 privilege log and I'd look to them to explain what
22 that adds in description to what's already there.

23 THE COURT: Okay.

24 MR. GODSHALK: Sure, Your Honor, this is Jesse
25 Godshalk on behalf of defendants. I mean since

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2 Spectrum just kind of asked us to weigh in on that,
3 happy to do so and explain what we are talking about
4 there. The file name here in this case, we decided
5 pretty early on that the vast majority of the
6 documents in this case would be electronic documents.
7 So, you know, as electronic documents they have file
8 names. I mean, you know, for instance, it might be
9 something like, you know, memorandumtothemanager.doc,
10 and that's the name of that Word document, that's the
11 file name.

12 THE COURT: Oh, you're talking about Word
13 documents?

14 MR. GODSHALK: Well, I mean I'm talking about
15 all of the documents, Your Honor, they all have file
16 names. I mean so how they, you know, would appear on a
17 computer screen if you opened a folder of electronic
18 documents. And there might be Word documents in there,
19 there might be PowerPoints, Excel spreadsheets, but
20 they would all have, you know, they'd be listed, for
21 instance, and you would see the file names there. And
22 that's what we're talking about, the file names.

23 THE COURT: Whatever the document was saved
24 under, whatever name it was saved under, that's what
25 you're talking about?

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MR. GODSHALK: That's correct.

3

THE COURT: Okay.

4

MR. GODSHALK: And the, I mean the reason why
5 we want that information is because it is good
6 information on the content of a document. I mean
7 obviously documents are frequently named with titles
8 that, you know, indicates what's in the file. I mean
9 as a general rule of thumb. And given what we believe
10 are the insufficient descriptions that Spectrum has
11 otherwise provided in its privilege log. We think it's
12 important to get the file names, to provide additional
13 context for what these documents actually are and, you
14 know, we cited a case in the agenda to support that
15 parties should have to provide the file names. I
16 think, you know, this shouldn't be a heavy lift.

17

In this day and age I would imagine that
18 Spectrum would be able to auto populate this
19 information from its document review software. So --

20

THE COURT: Yes, that's what I was going to
21 ask, isn't this a, isn't this a metadata field?

22

MR. GODSHALK: Yes.

23

ATTORNEY FOR PLAINTIFF: Your Honor, may I
24 respond? The only reason I'm asking for clarification
25 is when Spectrum served its initial privilege log,

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2 defendants raised some objections which we thought were not
3 necessarily well founded, but we went ahead and issued a
4 supplemental privilege log addressing defendants complaints.
5 And now defendants, without raising these drive files in
6 their initial complaint to the privilege log raise it in a
7 second round of complaints. So it just sort of seems like a
8 piecemeal way to cause more problems. And that's why I'd
9 like the Court's direction on whether --

10 THE COURT: I see. Did you all produce metadata
11 logs on the privilege documents, or is it just a log that
12 was, is it a combination of metadata fields and then
13 attorney fields, you know, filled in for the name of the
14 privilege and the subject matter?

15 ATTORNEY FOR PLAINTIFF: The latter, I think,
16 where it's not completely automated, I'll put it that
17 that way.

18 MR. GODSHALK: This is Jesse Godshalk, that's
19 correct, Your Honor, the latter.

20 THE COURT: Okay. Is there any other metadata
21 field that the parties talked about producing for
22 privileged documents that haven't been produced?
23 Because it seems to me both sides should be producing
24 the same information.

25 ATTORNEY FOR PLAINTIFF: Your Honor, this

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2 complaint by defendants is the first time I'd heard about
3 this being a deficiency in the privilege log so it was not
4 contemplated initially.

5 THE COURT: Okay.

6 MR. GODSHALK: Your Honor, I will add though,
7 this is Mr. Godshalk, I will add that in the parties'
8 protective order, they included that with produced
9 documents they would include a full panoply of
10 metadata. So I mean the parties did essentially
11 contemplate that in their, you know, document
12 collection, review and production that we would be,
13 you know, including a lot of metadata and I don't know
14 why, you know, there is no good reason for, you know,
15 including this metadata with the produced documents
16 but, you know, withholding it for the privileged
17 documents.

18 Now, certainly, if there is privileged
19 material actually in the file name, then they wouldn't
20 have to produce, wouldn't have to provide that, but I
21 would assume that that is, you know, that would rarely
22 if ever occur.

23 THE COURT: Right.

24 MR. GODSHALK: And so I don't know why they
25 can't give us this information.

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2 THE COURT: Right. Well I don't hear
3 plaintiffs refusing, I hear them just asking for
4 clarification. But, Mr. Godshalk, is this the only
5 category of metadata that's missing in your view?

6 MR. GODSHALK: Yes.

7 THE COURT: Okay. And you have produced this,
8 this field, for your privileged documents.

9 MR. GODSHALK: Okay.

10 THE COURT: Correct, Your Honor.

11 ATTORNEY FOR PLAINTIFF: Your Honor, may I
12 respond just briefly?

13 THE COURT: Sure.

14 ATTORNEY FOR PLAINTIFF: If this was so
15 critical, may I ask defendants why they didn't raise
16 it in the first round of privilege logs?

17 THE COURT: No, we're not going to get into,
18 we're not -- perhaps that was an oversight but I think
19 that this can be generated electronically pretty
20 easily. So what I would ask plaintiffs to do is go
21 back to your vendor and if you can have them generate
22 the file names for the documents on the log, I think
23 that that can be a, you know, an addenda to the log.
24 So I don't want to have you create a lot of, make
25 work. Going forward, you can include it in the log,

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2 but for now I think it's sufficient if you generate
3 these file names in the order that they appear on the
4 log and you can give that to the defendants.

5 ATTORNEY FOR PLAINTIFF: Very good, Your
6 Honor, I'll contact and we'll coordinate with our
7 vendor to understand what we need to do.

8 THE COURT: Yes. I mean it's like a subject
9 line, just providing more detail about the document.
10 It would be equivalent to a subject line in an email I
11 think.

12 MR. GODSHALK: Yes, Your Honor, that's
13 correct.

14 THE COURT: Right. And you're producing
15 subject lines in emails, is that right?

16 MR. BRANKO PEJIC: This is Branko Pejic, in
17 documents that are produced?

18 THE COURT: Yes, and the log.

19 MR. PEJIC: Well in the logs, the logs have
20 not had file names, they have descriptions and I'd
21 have to look to see if it actually has titles of
22 documents, that I don't know for sure.

23 THE COURT: No, what I'm saying is the re line
24 in emails is a metadata field.

25 MR. PEJIC: Correct.

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2 THE COURT: So I'm assuming that that is
3 produced. Mr. Godshalk, am I correct about that?

4 MR. PEJIC: Well, Your Honor, in our log it is
5 included, you know, in the file name field for the
6 emails.

7 THE COURT: Right, okay.

8 MR. GODSHALK: Right.

9 MR. PEJIC: Could we get some, and this is
10 Branko Pejic again, and this is meant to make sure
11 that Spectrum goes forward as I guess efficiently as
12 possible here. Could defendants please provide a
13 description of exactly what they have produced so I can work
14 with my vendor and make sure that we get this right the
15 first time? So the criteria of the metadata that appears on
16 defendant's privilege log in these drive descriptions,
17 I want to match that but I don't want any ambiguity
18 and us having to do this, you know, a second, third
19 time.

20 THE COURT: Well I don't want you to have to
21 redo it either. But basically it's a file name which
22 would be document titles, or subject matter lines in
23 emails. So the re line in emails. Those are the two
24 things.

25 MR. PEJIC: And Jesse, can you confirm that

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2 that is what appears in defendant's privilege log, do
3 you mind, please?

4 MR. GODSHALK: Yeah, I mean I'm pretty sure
5 that that is the case, I mean from my review of it,
6 yeah.

7 MS. BUTLER: And this is Marla Butler, I mean
8 I'm looking at the log and it's the ninth column, the
9 document, defendant's privilege log that was attached
10 to the agenda, it's hard to read because it's small.
11 But in the ninth column from the left you will find
12 the re line for emails and the file name for documents
13 that are not emails.

14 THE COURT: All right, so that should be
15 produced. And what I'd like you to do is once
16 plaintiffs generate that and include that going
17 forward, there should be no issue in terms of the
18 formatting. But in terms of the actual, the actual
19 disputes, how many documents are we talking about that
20 are on the respective logs? Ms. Butler, how many are
21 on your log approximately?

22 MS. BUTLER: Mr. Godshalk might know the
23 answer to that question better than I do.

24 Approximately how many entries do we have, Jesse?

25 MR. GODSHALK: You know, I'm not sure offhand,

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2 I feel like it's in the three-hundreds. I know that
3 Spectrum's log has 229 documents, I'm trying to pull
4 this up right now to see kind of how high this is. It
5 looks like defendant's log has 474 documents.

6 THE COURT: Okay. So, you know, for large
7 productions I don't think that's, that doesn't sound
8 like a crazy number to me. So I don't, it's not clear
9 to me that either side is, has an issue where they
10 feel that something's been over designated. And
11 perhaps, I think it's premature to talk about that
12 issue right now. Why doesn't defendant take a look at
13 plaintiff's log and then, and plaintiff can take a
14 look at defendant's log, and if there are issues we
15 can talk about that next, tee it up for next time, but
16 I want you to meet and confer on those issues.

17 MR. GODSHALK: Well, Your Honor, this is Mr.
18 Godshalk, I mean we already carefully looked at
19 Spectrum's privilege log and provided a letter that
20 very clearly laid out specific deficiencies. Spectrum
21 responded and basically said it was not going to
22 address any of those, it was not going to make any
23 changes in response to those. And the parties have
24 already met and conferred on that. I just don't know,
25 you know, what else we can do to try to, you know, get

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2 this done. I mean this is a matter, these are
3 deficiencies in, really in the content. I mean we're
4 still fighting over, you haven't even provided us
5 with, you know, sufficient information or, you know,
6 sufficient statements. I mean we're not even at the
7 point of saying, you know, give us that document
8 because that's clearly not privileged or something
9 like that. And so I think that's kind of where we are
10 in this.

11 THE COURT: Right. So what I'm hearing is it's
12 premature for the Court to rule on anything or to have
13 any briefing motions to compel. But, for example, I do
14 see that GE has, that Spectrum has raised that there
15 are entries on GE's privilege log where there is no
16 attorney, for example. So those are ones that parties
17 often have concerns about, so you'll need to meet and
18 confer on those.

19 MR. PEJIC: And, Your Honor, this is Mr.
20 Pejic. Mr. Godshalk is correct as to where we are
21 procedurally, but he is completely wrong on the fact
22 that Spectrum did not say we weren't going to do
23 anything. That is why I asked Your Honor earlier for
24 classification on the drive files because my
25 understanding from defendants was the big difference

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2 between our privilege logs was the fact that they had
3 included the drive files which provided more
4 information and cured any potential deficiencies in
5 the descriptions.

6 THE COURT: Okay, well, I'm not sure about
7 that in terms of the descriptions, it may be that the
8 parties hone in on a few of the entries, perhaps
9 entries where there is no attorney and require some
10 more specific explanation. But again, I think you call
11 can meet and confer on these issues over the next --

12 MR. GODSHALK: Your Honor? Your Honor, this
13 is Mr. Godshalk, if we could, just one point if we
14 could get a little bit of Court guidance on I think it
15 would be very helpful. And I understand, you know,
16 your encouragement to us to try to work this out. In
17 Spectrum's privilege log under assertions of privilege
18 they have frequently asserted in its, quote,
19 "attorney-client privileged and/or work product," and
20 the issue we have with that is that it's not clear to
21 us whether they are asserting just attorney-client
22 privilege, just work product or both. I mean it
23 appears that they're hedging, they're leaving their
24 options open and, you know, we think we're entitled to
25 a clear answer for each document, you know, is it

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2 attorney-client privilege, is it work product or is it
3 both. And they have basically dismissed this complaint
4 as, you know, just mere semantics but it's not. I mean
5 we want to know for each document which privilege,
6 specific privilege is being asserted on a document by
7 document basis. And without that I really just don't
8 see us being able to, you know, move forward in a
9 productive manner in evaluating their privilege log.

10

THE COURT: Mr. Pejic?

11

MR. PEJIC: Your Honor, I do believe that to
12 be semantics because this is the first time I've ever
13 had this issue raised on a privilege log in my career.
14 But if Your Honor instructs that and/or is improper
15 here, as I also told defendants during the meet and
16 confer, we will certainly go back and render whatever,
17 you know, we'll correct whatever but I just didn't
18 realize that the and/or issue was an issue to be
19 honest.

20

THE COURT: Well if you're ever bringing, it's
21 an issue because if you're, if you are going to bring
22 a motion to the Court, the Court is evaluating the
23 privileges asserted, have you asserted both, have you
24 asserted one or the other because sometimes one
25 applies and the other doesn't apply. And there's

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2 certain, certain waivers that may apply to attorney-
3 client that don't necessarily apply to work product.
4 So this is something that is important to tease out.
5 For example, if there's not attorneys in the
6 communication it's less likely for the communication
7 to be attorney-client privilege, but perhaps it is
8 work product. But again, work product, as you know,
9 has to be in anticipation of litigation or in
10 connection with litigation. So I think it is important
11 to have that distinction.

12 MR. PEJIC: I fully understand, Your Honor,
13 and thank you for the clarification, we will resolve
14 that issue. I do, I honestly apologize because I've
15 never had that be an issue.

16 MR. PEJIC: Okay.

17 THE COURT: So let's next talk about the
18 production, GE's production. I'm not sure this is an
19 issue, where, GE has said that it has, I'm assuming by
20 today you have produced a number of the things that
21 Spectrum is looking for and you're continuing on a
22 rolling basis, is that correct?

23 MR. GODSHALK: That is correct, Your Honor,
24 this is Jesse Godshalk. I mean our position on this
25 is that, you know, these documents that Spectrum is

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2 focused on currently the documents relating to the
3 [REDACTED]. I mean we have produced a large volume of
4 documents relating to the [REDACTED]

5 [REDACTED] I'd say tens
6 of thousands of documents relating to this, including
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] And, you know, we
10 are continuing our collections and productions and I
11 would suspect that, you know, there will be additional
12 documents relating to the [REDACTED] in our
13 additional productions.

14 THE COURT: What about documents pertaining to
15 the other patent that Spectrum has identified, why are
16 you on the collection of those?

17 MR. GODSHALK: Yes, Your Honor. Yes, Your
18 Honor. We, actually, we focused heavily on that over
19 the last month given the, you know, subject matter of
20 the last conference. I can tell you that after the
21 last conference we finished up collections from, you
22 know, two custodians that we've been working on and
23 began collections from an additional six custodians
24 with a focus on those other patents. And particularly
25 we're going to named inventors of those other patents.

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2 So, you know, we very much, you know, had a focus on
3 that area on our collections in the month of March.

4 THE COURT: Okay, so when do you anticipate
5 completing review and production of those documents
6 concerning the other patent?

7 MR. GODSHALK: Yes, Your Honor. I mean in
8 general we are planning to substantially complete our
9 document production by the end of April, and we've
10 discussed that with our vendor. I mean we feel about
11 80 percent certain that we will substantially complete
12 our production by the end of April. But I feel even
13 more certain that we can get this done by mid-March.

14 MS. BUTLER: Mid-May.

15 MR. GODSHALK: Mid-May.

16 THE COURT: Mid-May, okay. Okay, and where is
17 Spectrum on its production?

18 MR. PEJIC: One question, Your Honor, this is
19 Branko Pejic for defendants. Do you have a sense of
20 what volume of documents you'll be producing, because
21 you've produced about 80,000 to date and what
22 percentage of your total production do you think that
23 is?

24 MR. GODSHALK: You know, Mr. Pejic, we can
25 discuss this offline, but, you know, I don't have

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2 those types of figures at my fingertips.

3 MR. GREENBLUM: Your Honor, this is Neil
4 Greenblum, may I speak?

5 THE COURT: Yes.

6 MR. GREENBLUM: I've been pressing GE on this
7 issue to tell them how much we should anticipate and
8 at this stage it seems to me it's not unreasonable for
9 GE to make a statement to the Court of we're 50
10 percent complete or 80 percent complete. I mean we
11 just can't understand that we're at this stage of
12 discovery and we can't get an answer of where they
13 stand.

14 THE COURT: So, okay, Mr. Godshalk, how many
15 custodians have you collected from, how many remain to
16 be collected from approximately?

17 MR. GODSHALK: Yeah, Your Honor, yes, I think
18 that approximately, I think it's about 18 that we've
19 collected from but I should say that there are a few
20 of those where we've had a custodian interview where
21 we interviewed them about what documents they have,
22 but the process that we have set up, they need to
23 receive a drive then in the mail and then we set up a
24 separate interview with our vendor where the documents
25 are actually put onto the drive and then sent back to

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2 us.

3 So when I say, you know, for some of those,
4 the collection process is not 100 percent complete
5 yet, and there may be, so of those 18 maybe two or
6 three where we still need to actually kind of complete
7 the collection. And then there are at least another
8 two that I know we want to collect from, and in
9 addition to that there are a number of targeted
10 searches and connections that we need to run
11 (indiscernible) a, you know, big, let's grab
12 everything but, you know, it's going back, in many
13 cases it's going back to people we've already
14 collected from and getting, you know, narrow
15 categories of documents, in some cases getting, you
16 know, newer documents. So that's kind of the status
17 of things.

18 THE COURT: And do you have an idea how much,
19 what's the volume in terms of the documents left on
20 the review platform?

21 MR. GODSHALK: Well what's currently on the
22 review platform is I think about several thousand but,
23 as I said, I mean there's still, of the custodian
24 interviews and collections that we did from six
25 custodians in March, I think that five of those six,

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2 those documents have not yet hit the review platform,
3 and I'm not certain of the volume that those will
4 produce. I don't think it's going to be huge, but I
5 just, you know, I can't be certain of the volume.

6 In addition, I mean in terms of some of the
7 uncertainties here, I mean opposing counsel served an
8 additional 22 requests for production just this past
9 Friday, and because of the Passover holiday I haven't
10 even had an opportunity to confer with the potential
11 custodians about those requests yet. So I mean it's
12 things like that, I'm just not even sure what kind of,
13 you know, volume I'm going to have to collect on those
14 requests, they're brand new. I mean --

15 THE COURT: So what I'm hearing is you're
16 maybe about halfway done?

17 MR. GODSHALK: I think we're probably more
18 than halfway but, you know, maybe if I had to guess, I
19 mean I guess the number that's coming to mind is like
20 60 percent.

21 THE COURT: Okay.

22 MS. BUTLER: Your Honor, this is Marla Butler.
23 We would like to receive that information from
24 Spectrum, as well. I'll just note that while Spectrum
25 has indicated that we haven't provided that

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2 information to Spectrum, Spectrum hasn't provided that
3 information to us either and we'd like a sense of the
4 volume of their production that remains, as well.

5 THE COURT: All right, so, Mr. Greenblum, do
6 you have a sense of that?

7 MR. PEJIC: This is --

8 MR. GREENBLUM: Yes, go ahead, Branko and then
9 I have something to say.

10 MR. PEJIC: Neil, if you'd like to respond to
11 Marla, go ahead, and then I'll take on the question.

12 MR. GREENBLUM: Well, you know, this is the,
13 you know, we did it so you do it --

14 THE COURT: I don't want to have a tit-for-tat
15 conversation between counsel, I just want to hear from
16 plaintiffs about what they've produced and what they,
17 what percentage they have left.

18 MR. GREENBLUM: At this point I think we've
19 produced over 700,000 documents, about 10 times as
20 many documents as GE has produced.

21 THE COURT: Okay, the number, itself, I'm not,
22 I don't really hold much stake in the number of
23 documents because parties may have different numbers
24 of documents, you know. I mean it's just certain
25 custodians generate more documents than others and so

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2 the number of documents really is not necessarily
3 meaningful. What's meaningful is what, you know, how
4 many custodians have you collected from and how much
5 of their data have you produced?

6 MR. GREENBLUM: Okay, I'll leave that to
7 Branko as to the number of custodians.

8 MR. PEJIC: Thank you, Your Honor, this is
9 Branko again. The reason why we were concerned about
10 the volume that GE is producing is because of the fact
11 that they've produced about 80,000 documents to date.
12 And, you know, with 30 days, you know, we're going to
13 start deposition and so I really didn't want 100,000
14 documents being dumped at the end of March. And so
15 that's our concern in trying to get a sense of it.

16 THE COURT: I understand.

17 MR. PEJIC: Turning to the production of what
18 Spectrum has done, and I will tell you how we
19 structured it because of the way the case is
20 structured so we can then talk about what's left to do
21 which I think is minimal is we phased our discovery in
22 three sets as technical discovery/trade secrets, then
23 custodians, and finally in the broader picture all the
24 other administrative ancillary stuff. So as far as
25 the technical trade secret documents I think we are

1

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2 complete there or 95. We have searched all the
3 custodians that we think were relevant which is the
4 founder of the company, the CEO, the chief technical
5 officer and the head of sales, and both the chief
6 technical officer and the founder are the named
7 inventors or the alleged inventors of the trade
8 secrets.

9 And these, to understand, Spectrum has two
10 products, which is the D-SPECT as well as the Veriton
11 and these development activities have been ongoing for
12 decades. So we produced emails from 2005 to 2015 and
13 maybe a little bit longer temporally for those four
14 individuals and that was that huge production. And we
15 are substantially through the administrative stuff and
16 I would presume that we would produce less than
17 100,000 more documents. And as far as substantially
18 complete I think we're past 90 percent now.

19 THE COURT: Okay. Okay, good. Now in terms
20 of the, I think the last issue in the agenda relates
21 to the 595 patent information. I think that this is
22 not actually a dispute at this point, but so I don't
23 think we really need to spend much time on it. Right
24 now it's not at issue in the case.

25 So let's talk next about this disclosure. Mr.

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2 Greenblum, you submitted this letter with the
3 attachment under seal. This is a former employee. I
4 assume it's somebody, a person of interest, a
5 potential witness in the case, is that right?

6 MR. GREENBLUM: That's correct, Your Honor.

7 THE COURT: All right, is there any, I'm not
8 sure what GE's position is on this, if any?

9 MS. BUTLER: Your Honor, we just received this
10 last night, we're looking at it, it was provided to
11 the Court supposedly in case it was an inadvertent
12 disclosure. We will look into whether it was an
13 inadvertent disclosure and we will respond
14 accordingly. But I'll add, Your Honor, there is one
15 agenda item that is remaining, I think it's very
16 important that we discuss, related to the document
17 production, if I can address that?

18 THE COURT: Sure.

19 MS. BUTLER: So, Your Honor, on our last call
20 we raised the concern that Spectrum had dumped 350,000
21 documents on GE and you advised at that point that GE
22 needed to go back and look at the production. And we
23 have, and we've started reviewing those documents. And
24 we've confirmed that this is the definition, Your
25 Honor, of a document dump. We started by reviewing

1 PROCEEDINGS 29

2 the first 2,000 or so documents in Spectrum's
3 production of 350,000 documents. We ran searches
4 through the remaining documents. And our finding of
5 relevance rate, Your Honor, of less than 15 percent
6 and really closer to 10 percent, so that means across
7 these two productions of about 430,000 documents,
8 around 385,000 of them are not relevant to this case
9 and should not have been produced.

10 I want to explain how we know for sure that
11 Spectrum has not been reviewing documents on a
12 document by document basis because of the types of
13 documents that we're finding in the production. And
14 over the last few days I've personally reviewed many
15 of these documents myself, and I want to describe to
16 you some of the documents that we're finding. And I
17 will let you know that I'm going to save the best for
18 last here.

19 The vast majority of these documents are
20 emails. At least the beginning of the production goes
21 back to 2007, the NDA here wasn't signed until 2009,
22 and every single document is designated highly
23 confidential. In the protective order there's two
24 tiers, confidential or highly confidential, there's
25 been no review for proper designation, but here's the

1 PROCEEDINGS 30

2 types of documents that we're finding.

3 Among the emails, [REDACTED]

4 [REDACTED]. We're finding [REDACTED]. We're
5 finding [REDACTED]. We're finding

6 [REDACTED]. [REDACTED]

7 [REDACTED].

8 Emails regarding invoicing for [REDACTED].

9 [REDACTED]. There are hundreds of
10 thousands of emails, Your Honor, that fall into these
11 types of categories with no relevance to this
12 litigation.

13 And then, Your Honor, there are the
14 PowerPoints that were produced, and how do we know for
15 sure that those PowerPoints were not reviewed for
16 relevance. There's a 41 slide presentation on [REDACTED]
17 [REDACTED]. There's a 31 slide presentation with
18 pictures of [REDACTED]. These are
19 just examples of many, many, many documents in the
20 production.

21 But then, Your Honor, there's the [REDACTED]
22 in the production. There's a PowerPoint presentation
23 that's titled, [REDACTED] And, you know, you
24 can stop me when you feel like you've heard enough
25 here, but in that presentation there's a, there are

1 PROCEEDINGS 31

2 pictures of [REDACTED], there's an image of a [REDACTED]
3 [REDACTED].

4 There's pictures of [REDACTED]
5 [REDACTED]. There's another PowerPoint
6 presentation with cartoon drawings of [REDACTED]
7 [REDACTED]. This particular --

8 THE COURT: Okay --

9 MS. BUTLER: So you get the point, Your Honor.

10 THE COURT: Mr. Pejic, what's going on, why
11 would these documents be included in the production?

12 MR. PEJIC: I'd like to see a list of them,
13 Your Honor, this is the first I've heard any of this.
14 I can say I've talked to my people and we have run
15 searches for relevance and for privilege and pulled
16 those documents. If GE would like to cite those
17 documents to me I can take a look and try to explain
18 it. But I can say --

19 THE COURT: But the point is, but the point
20 is, Mr. Pejic, you don't just pull the documents using
21 the search terms, you review them and exclude ones
22 that are not relevant. I mean the search terms are a
23 way to cull the documents to a reasonable group to
24 review for relevance. They're ones that the search
25 terms hopefully will hit on relevant documents but it

1 PROCEEDINGS 32

2 doesn't necessarily mean that all the hits are
3 relevant and that's what the attorney review team is
4 for.

5 MR. PEJIC: And, Your Honor, I don't know why
6 these would have been picked up on the relevance
7 reviews. I mean there might be something in an email
8 address, it might be something in the string, I can't
9 speak to the specific documents. I can say we found
10 similar rates and I have not looked for [REDACTED],
11 of course, but similar rates of irrelevant documents
12 from GE and when pressed on that they told us, well,
13 that just happens, you have more.

14 MS. BUTLER: Your Honor --

15 THE COURT: There's always, unfortunately,
16 because of the broad standard of relevance and because
17 of the way that parties craft their Rule 34 requests,
18 in most litigations the vast majority of things
19 produced is marginally relevant. That's the problem
20 with e-discovery right now, and I'm sure counsel would
21 agree with me that in almost every case the vast
22 majority of stuff produced is not stuff that you're
23 going to use on summary judgment or at trial.

24 MS. BUTLER: And, Your Honor, I agree --
25 sorry.

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THE COURT: And so the idea is to try to limit the production of that stuff. I don't know how to do it better other than to encourage lawyers to be extremely precise with their document requests. But lawyers don't do that, they're afraid to hone in that carefully and search terms are a very crude way to rule, you know, to identify relevant documents, but that's what we have.

10

MS. BUTLER: Your Honor, if I can respond -- if I can respond?

12

THE COURT: Hang on, hang on.

13

MS. BUTLER: Yep, this is our issue.

14

THE COURT: So hang on. So let me ask Spectrum, I thought I had asked last time and I thought I had received an answer that once the search terms are applied you have actual people looking at them, at the documents pulled, to tag them for relevance, privilege, et cetera. Is my understanding, correct?

20

MR. PEJIC: Your Honor, this is Branko Pejic, I did not understand to have said we looked at every document, I said we ran searches and reviews. And GE has asked for over a decade of emails and it would be disproportional for us to have to look at each and every one of those hundreds of thousands of emails

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2 when the document production request is that broad. We
3 have done what we think is reasonable and if GE would
4 like to point out the specific documents we are happy
5 to understand how the hits actually occurred. But it
6 would just not be, it would be unjust and manifestly
7 unfair to require spectrum to look at each of hundreds
8 of thousands of documents that have been requested by
9 GE.

10 THE COURT: I don't understand, Mr. Pejic,
11 you've provided documents, you don't even know the
12 documents that are included in what you produced?

13 MR. PEJIC: I know them by, I can identify
14 them by folder and custodian and understand what they
15 related to and beyond that I don't know that I can
16 speak to those details because I was not involved on
17 the day to day review. I can certainly, you know, talk
18 to those people or we can provide a different, a
19 subsequent explanation, but at this point in time I
20 can speak to the high level review and how it was
21 done.

22 THE COURT: I'd like to understand a little
23 bit more about how the review was done. I also don't
24 understand why everything would be labeled highly
25 confidential.

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MR. PEJIC: Because this is a trade secret case, Your Honor, and any disclosure of a trade secret by Spectrum could potentially destroy that trade secret.

6

THE COURT: I understand that, but that means that you haven't actually evaluated whether something is highly confidential, confidential or not confidential. There's certainly some documents in the review that aren't the, in the highest category.

11

MR. PEJIC: And, Your Honor, you're correct and we haven't produced every document as highly confidential. We've certainly produced all the documents that were focused on technical discovery that evidenced the trade secrets as highly confidential, absolutely. And the emails that relate to those have been designated highly confidential.

18

MS. BUTLER: That's not true, Your Honor. That's not true.

20

THE COURT: What I want for Spectrum to do is to provide me with a letter providing a little bit more detail about the actual review process so that I understand what's been done.

24

MR. PEJIC: Yes, Your Honor.

25

THE COURT: Okay. Can you provide that to me

1 PROCEEDINGS 36

2 within two weeks?

3 MR. PEJIC: We'll endeavor to do so, we should
4 be able to.

5 THE COURT: Okay.

6 MS. BUTLER: Your Honor, can I just, for a
7 point of clarification, I, we have been asking for
8 Spectrum to confirm that documents were reviewed on a
9 document by document basis. I think we finally heard
10 on this call that they haven't been. That, instead,
11 they ran search terms and produced documents that hit those
12 search terms.

13 MR. PEJIC: All right, let me respond to that.

14 Your Honor --

15 MS. BUTLER: I'm not finished. I'm not
16 finished. I'm not finished.

17 MR. PEJIC: You're mischaracterizing --

18 MS. BUTLER: I'm not finished. I'm not
19 finished.

20 THE COURT: Hang on, Mr. Pejic. Ms. Butler,
21 keep it short.

22 MS. BUTLER: Understood. And so what I am
23 hoping this letter will make clear is whether or not
24 Spectrum did what we believe they were required to do
25 as the plaintiff in this case who brought this case,

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2 and as GE has done, review documents on an individual
3 basis to make a determination about relevance,
4 responsiveness and confidentiality designation.

5 Because we have been asking for that for so long, I am
6 just asking that this letter include the extent to
7 which Spectrum has done that for its productions, and
8 Jesse, you might have to help me on the number, the
9 350,000 document production and the 80,000 document
10 production. Those are the ones where every document is
11 labeled highly confidential and it includes hundreds
12 of thousands of emails with no relevance to this case
13 covering issues like [REDACTED]

14 [REDACTED], all of which are designated highly
15 confidential. We want those issues addressed in this
16 letter.

17 MR. PEJIC: And, Your Honor --

18 THE COURT: All right, Ms. Butler, thank you
19 for your comment. What I'm going to ask, I don't
20 really want to hear any more argument on this, so Mr.
21 Pejic, in your letter just let me know the process and
22 what the process was for identifying relevant
23 responsive documents and what the process was for
24 designated confidential and privileged, okay?

25 MR. PEJIC: Yes. And could we, could I please

1 PROCEEDINGS 38

2 ask for the same from defendants because --

3 THE COURT: No, we don't, we are -- no, I want
4 that, I want --

5 MR. PEJIC: Your Honor, they --

6 THE COURT: I'm not going to require that
7 right now of GE. So I'd like you to provide that
8 information, GE is at 50-60 percent of its production
9 and let them focus on that right now.

10 MR. PEJIC: Okay, but they've already clawed
11 back privileged documents which shows they didn't
12 review every document individually. And that's why I
13 would ask --

14 MS. BUTLER: That's not true.

15 THE COURT: Counsel, I don't want to have an
16 argument between counsel on this conference, that's
17 not appropriate. Look, I'm not saying, nor am I going
18 to hold, that every single document, that you have to
19 have a linear review of every single document, that's
20 not always the case. it really depends on the types of
21 documents that are being pulled and so forth. But
22 there has to be, there has to be an evaluation for
23 responsiveness and relevance that is reasonable within
24 the meaning of the Federal Rules.

25 So, Mr. Pejic, I want your letter to address

1 PROCEEDINGS 39

2 that. And let me, for the last, the last issue I want
3 to address today is whether GE has any, is there any
4 other item that GE wanted to raise with respect to
5 this disclosure? I'm not sure why this email is an
6 inappropriate disclosure, but --

7 MS. BUTLER: I don't know that it is, Your
8 Honor, but with Spectrum having raised the issue in a
9 filing with the Court we will certainly look into it
10 and make sure that the communications comply with Your
11 Honor's order regarding communicating with former
12 employees.

13 THE COURT: Okay. All right, so thank you all,
14 I think this is all of the issues. I'll look forward
15 to your letter, Mr. Pejic, and to our next call. As I
16 said, I want you to focus on the completing, getting
17 substantial completion this month of the document
18 production and resolving any privilege issues.

19 Thanks, everyone, and have a good day. We're
20 adjourned.

21 (Whereupon, the matter is adjourned.)
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3 C E R T I F I C A T E

4

5 I, Carole Ludwig, certify that the foregoing
6 transcript of proceedings in the case of Spectrum Dynamics
7 Medical Limited versus General Electric Company, et al.,
8 Docket #18cv11386, was prepared using digital transcription
9 software and is a true and accurate record of the
10 proceedings.

11

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13 Signature

Carole Ludwig

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Carole Ludwig

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Date: April 1, 2021

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